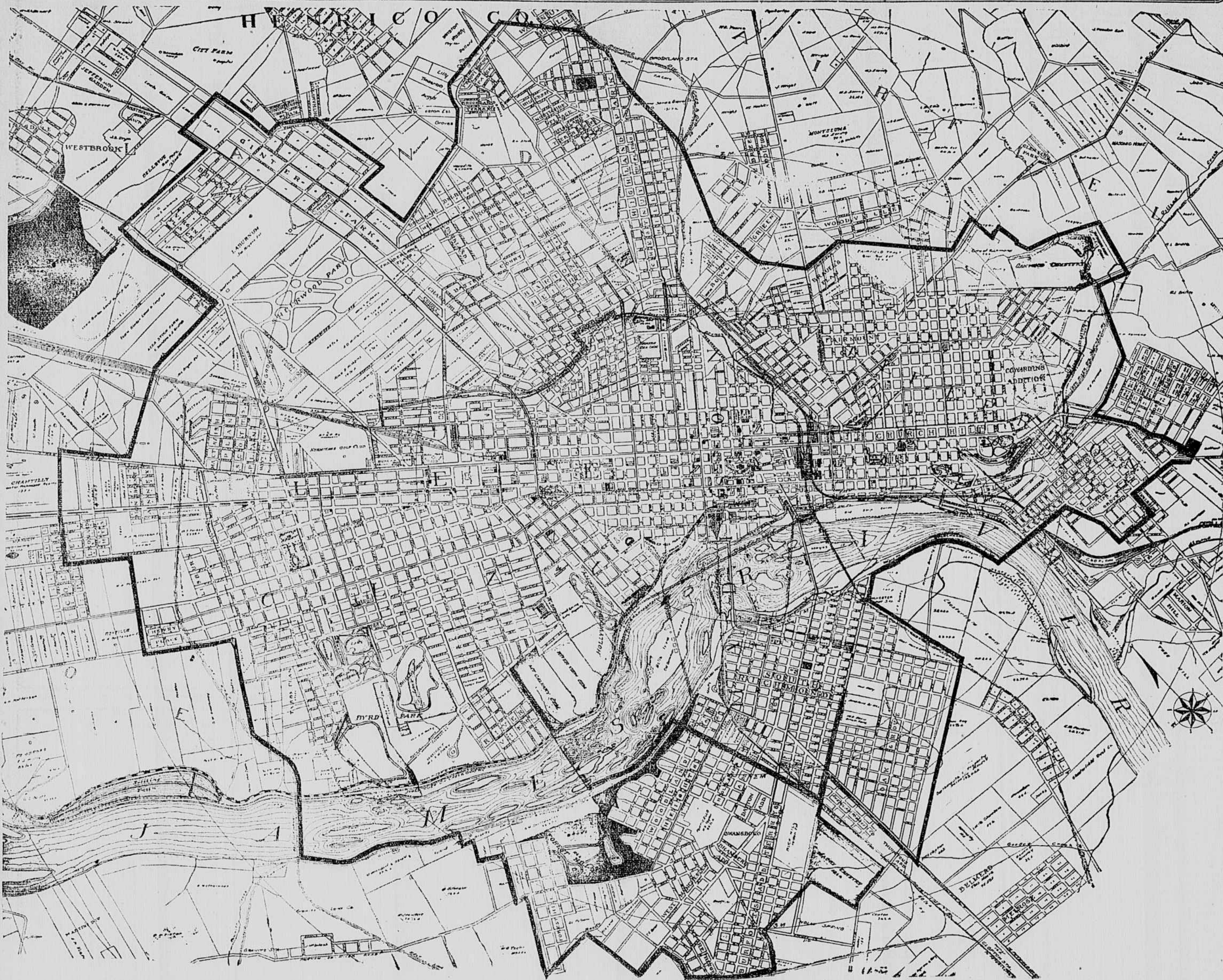


# ANNEXATION LINES IN ACCORDANCE WITH COURT DECREE



## RICHMOND WINS SWEEPING VICTORY IN ANNEXATION CASE IN HENRICO COURT

(Continued From First Page)

annexation is to be conducted under the act of March 10, 1904, so as to guarantee to every citizen of the new territory all rights accorded under that act.

Judge Campbell ordered City Engineer C. E. Bolling to survey the new districts and to prepare a map showing the exact lines, described with mathematical certainty, so that this description may be entered in the final decree.

City Accountant George S. Crenshaw was ordered to make an estimate from Henrico and Chesterfield Counties of the value of the annexed territory, and also to make an estimate of the proper proportion of all existing debts of the counties and the various incorporated towns as well as the several school district debts which are to be assumed by Richmond. The accountant was directed to report forthwith on these matters so that his report may become a part of the final decree.

**EXPRESSED AT OUTCOME**

General satisfaction over the court's decree was expressed by attorneys who had been interested in the case. City Attorney Pollard declared it a sweeping victory and himself as "delighted."

his opinion for the final time, before offering the main open court. When he returned, some fifteen minutes later, the court was at once called to order and without delay the judge began the reading of his decree. But little interest has been shown in the case, outside of the members of the bar, but yesterday practically every seat was taken and none left until the last word of the opinion had been read. Among those present were a number of "New Richmonders" from the suburban towns and newly annexed territory, as well as members of local civic organizations and representatives of the legal fraternity.

## HAS NO POWER TO COMPEL CITY TO PAY FOR ROADS

(Continued From First Page)

unit for other purposes than building. **COURT HAS AVOIDED AGRICULTURAL PROPERTY**

In addition to the reasons set out in the ordinances, Mr. Dillon and 28th Cys. both give as reasons for annexation the fact that property has been put upon the market in lots and has been so managed as not to be capable for use for agricultural purposes as a very potent reason why the same should be brought into the city.

In taking the lines set out in the decree the court has, as far as possible, avoided taking in any agricultural lands, except where it was necessary to do so to have the territory in common form. Because of the fact that the revenues of Henrico County will be seriously affected, and particularly owing to the condition in which certain magisterial districts of the county would be left, the court has excluded all property which it does not deem necessary for the use of the city in the near future.

to be taken away from it, this still leaves the county perhaps the fifth wealthiest in the Commonwealth. The county is, of course, aware of the fact that by a proper proceeding it may change its magisterial and school districts, and thus relieve by this change the ill features above spoken of, should it see fit to do so.

**NO IMPROVEMENT OF COUNTY ROADS**

Owing to the fact that there is this straightened condition, particularly of some magisterial districts and of one school district, the court has very carefully considered the position advocated by the attorneys for the county, that within a certain specified period, in annual payments, the city should be required to contribute the sum of \$20,000 to be expended upon certain roads of the county beyond the annexed territory. The court is frank to say that if it thought it had the power to do so, it would make some provision of this sort, perhaps not to the extent asked for by the county, but after careful and mature consideration and a full examination of the law upon this point, the court has reluctantly come to the conclusion that it has no such power.

Prior to the Constitution of 1902 the Legislature had the power of passing special statutes for the enlargement of cities and towns. That the Legislature had this power was demonstrated against the city of Richmond in its Grant 223. The Constitution of 1902 denied it unless for the Legislature, and declared that the general Assembly shall provide by general laws for the extension and contraction of the corporate limits of cities and towns, and forbade any special acts for the purpose. (See Virginia Constitution, article 8, section 12a.) The Legislature, in pursuance of the Constitution of Virginia, by an act approved March 10, 1904, delegated this power to judges of the circuit courts. By this act the courts necessarily are clothed with some legislative functions, along with judicial functions, and in Henrico County vs. City of Richmond, 106 Virginia, it was strenuously contended that this law was unconstitutional for that reason.

**JUDGES NAMED AS GOVERNMENTAL AGENTS**

Judge Harrison, in delivering his opinion in this case, says: "Under this constitutional provision it was impossible for the Legislature to specify by general law what amount of territory should be annexed, as the necessity of each case would vary according to the size, crowded condition and financial ability of the city asking for annexation. It was equally impracticable for the Legislature by general law to determine the terms and conditions by which such extension should be made. It therefore became a necessity that the Legislature should select and designate some agency to exercise a judgment on the facts of each case. The Legislature declared the Circuit Court judges of this State as the governmental agency for carrying out the provisions of the law."

clearly from the whole of this opinion it must be conceded that the judge performs some legislative functions, and that necessarily this will be the case in properly determining the facts of each case, but the court does not think that it has any authority whatever to go beyond the clear intent of the act approved March 10, 1904. After a careful reading of this act, considering all portions of the same and attempting to give full meaning to the act as a whole, this court is inclined to believe that the terms and conditions which it has a right to deal with in determining the question of annexation applies to terms and conditions between the city and annexed territory. I say "inclined to believe" because I am not fully convinced that this is the proper construction. The main reason why the court is inclined to this position is that the provision made for the counties is expressly stated in the act, and nowhere is there any positive power given the court for applying this statement to the county, and further, the policy of the act does not seem to contemplate compensation for territory to the county.

**CITY TO PAY MONEY TO COUNTY**

Whenever the language in this act is used, giving the court power to determine what are fair and reasonable terms, it is used in connection with the annexed territory, but the court, in its judgment, is relieved from having to determine whether or not this act is comprehensive enough to give it power to compel the city to pay this sum upon the county roads. It seems that the weight of the decision is to the effect that the Legislature itself has no power to compel a city to expend money for any local purpose.

Judge Cooley, in his Constitutional Limitations, page 327, subdivision 3, says: "It is believed that the Legislature has no power against the city to compel it to pay money to the county for any local purpose. Such matters are to be disposed of by the city, and the interests of the county are to be determined by the city, and the city has the right to determine them for themselves, which the Legislature in private corporations have to determine for themselves which arise for their corporations. The State in such cases may remove restrictions and permit action, but it cannot compel it. City."

ing Carlin vs. Saginaw, 50 Michigan 17 (14 N. W. 6770), in which it was stated that the city cannot be compelled to erect a building for the county, but it may be permitted to do so if it so elects.

## JUDGE CAMPBELL LAYS AUTHORITY

On page 341 Mr. Cooley says: "Those cases which hold it competent for the Legislature to give its consent to a municipal corporation engaging in works of public improvement outside its territorial limits or becoming a stockholder in a private corporation must be conceded on all hands to have gone to the very limit of constitutional power in this direction, and to hold that the Legislature may go even further and under this power control the taxation of political divisions and organizations of the State, may compel them without the consent of their citizens to raise money for such, or any other unusual purposes, or to contract with the State for the purpose of introducing new principles into our system of local self-government not within the contemplation of the makers of the American Constitution. There are cases which hold the contrary view, that of Thomas vs. Leland, 24 Wend. 340."

A collection of cases is given in "Lawyer's Reports Annotated 465," where a distinction is drawn between a public use and a local use. The case under which this note is given is a case from Connecticut—State of Connecticut vs. Samuel H. Williams, treasurer, and is one in which the Legislature created a highway district that required certain towns within that highway district to pay the cost of erecting bridges across the Connecticut River, placing it upon the ground that these four towns upon whom the cost was placed were the beneficiaries of this bridge, and it was clearly to their interest to have it built. The Supreme court of Connecticut upheld this act of the Legislature and it was taken to the Supreme Court of the United States, and there the Supreme Court of Connecticut was affirmed, basing their decision upon the fact that this was a highway district, and these cities and towns were the beneficiaries of this bridge, and it was clearly to their interest to have it built. The Supreme court of Connecticut upheld this act of the Legislature and it was taken to the Supreme Court of the United States, and there the Supreme Court of Connecticut was affirmed, basing their decision upon the fact that this was a highway district, and these cities and towns were the beneficiaries of this bridge, and it was clearly to their interest to have it built.

quire a city to pay out of its treasury the salary of the stenographer in courts in the city having jurisdiction in cases of felony; it may impose upon the city the expense of renting and keeping a place for holding court and for the offices of clerk, sheriff and judge of the court. The Legislature may, in the exercise of its police power, impose upon counties and cities the support of paupers; the Legislature may impose upon towns the debt of school districts which have been abolished by a previous statute, the Legislature in changing boundaries of counties, towns or cities, or in annexing one to another, may provide how the property of former corporations and the burden of paying their debts shall be distributed among them. These are all decided to involve matters of general rather than local concern.

The courts have denied the power of a State Legislature to compel a municipal corporation to establish and pay for city parks; they have denied the right of the Legislature to compel a city to bear the whole expense of county buildings; a statute compelling a town or other municipal corporation to become a stockholder in a railroad or other corporation by exchanging its bonds for stock, without consent, has been declared to be unconstitutional. All of these cases are taken from the note to this case referred to in forty-eight Lawyers Reports Annotated.

## CONCLUSIONS REACHED BY JUDGE CAMPBELL

From a careful consideration of these cases the court has reluctantly come to the conclusion that such a request of the city as is asked for in this case would not be upheld. Passing by the question of the legality of compelling the city to expend the money as designated upon the roads, the city undoubtedly has the right to do so should it see fit, and when there is taken into consideration the fact that these roads leading into the city are feeders for the city, are very largely used by parties bringing produce to the city for sale there, the fact that the citizens of Richmond use these roads very largely for their pleasure and enjoyment, and the further fact that particularly Brookland district and Fairview district will, for some years to come, and perhaps until they have a readjusting, be very much crippled by reason of the fact of the annexation of so great a part of their territory. In value, the court thinks that the city would be only doing its duty should it, within the next four or five years, assist the county to the extent of at least \$100,000 in the upkeep of these roads outside of the annexed territory leading into the city.

It was earnestly insisted in argument that as the language of the act said that the county should be compensated for the school buildings and not that the county should be paid

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for the same, that then any portion of the school debt which the school district had to assume should be deducted from the value of the school buildings, or else the district would be more than compensated.

## SPECIAL PROVISIONS

**MADE FOR GINTER PARK**

Had there been a specific lien on the individual properties taken in for the purpose of erecting the school and the line on upon these properties that in addition thereto it shall also pay for public school buildings, the court is of opinion that the continuation of the city is not sound.

For instance, had there been a school debt, and the city took in no school buildings under this statute the court is clearly of the opinion that a pro rata proportion of this debt would have to be paid by the city. In other words, it is a debt of the district, and not upon the individual property alone. The court hesitated for awhile whether or not the school district debt was a debt of the county, but after consideration it is satisfied that in this regard a debt should be included.

In arriving at its view in regard to Ginter Park the court has taken into consideration the vast amount of improvement which has been done in Ginter Park and the contemplated improvement and the fact that it receives very little compensating benefit has brought the court to the opinion that it should have special provisions made for it in this proceeding.

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